

ORIGINAL
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

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CLERK OF COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRINITY SBIC, L.P.,

Defendant.

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No.

4-04CV-594-A

COMPLAINT FOR RECEIVERSHIP AND INJUNCTION

Plaintiff, the United States of America, on behalf of its agency, the United States Small Business Administration, for its cause of action states as follows:

I. PARTIES, JURISDICTION AND VENUE

1. This is a civil action brought by the United States on behalf of its agency, the Small Business Administration (hereinafter, "SBA", "Agency" or "Plaintiff"), whose central office is located at 409 Third Street, S.W., Washington, DC 20416.

2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311, and 316; 15 U.S.C. §§ 687(d), 687c, 687h; the Small Business Act, 15 U.S.C. § 634(b)(1); and 28 U.S.C. § 1345.

3. Defendant, Trinity SBIC, L.P. (hereinafter, "TRINITY", "Licensee" or

"Defendant"), is a Delaware limited partnership formed on or about March 10, 2000 and maintains its principal office at 301 Commerce Street, Suite 3300, Fort Worth, Texas 76102. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h, and 28 U.S.C. § 1391(b).

Statutory and Regulatory Framework

4. TRINITY was licensed by SBA as a Small Business Investment Company ("SBIC") pursuant to Section 301(c) of the Act, 15 U.S.C. § 681(c) on April 4, 2000, SBA License No. 03/73-0218, solely to do business under the provisions of the Act and the regulations promulgated thereunder.

5. Section 308(c) of the Act, 15 U.S.C. § 687(c), empowers SBA to prescribe regulations to carry out the provisions of the Act and to govern the operations of SBICs. SBA has duly promulgated such regulations, which are codified at Title 13 of the Code of Federal Regulations, Part 107 (the "Regulations").

6. TRINITY's Amended and Restated Agreement of Limited Partnership expressly provides that TRINITY was organized for the purpose of operating under the Act and subject to the Regulations issued by SBA thereunder.

7. TRINITY's sole general partner is Trinity SBIC Genpar, L.L.C., a Delaware limited liability company.

8. Section 303 of the Act, 15 U.S.C. § 683, authorizes SBA to provide financing to licensed SBICs.

9. Pursuant to Section 303 of the Act, 15 U.S.C. § 683, SBA provided funds to TRINITY through the purchase of Participating Securities, a form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$ 78,650,000.00.

10. Compliance with the terms of Leverage provided by SBA required that TRINITY not have a condition of Capital Impairment, as that term is defined under the Regulations.

11. According to audited financial information provided by TRINITY to SBA on SBA Form 468 as required under the Regulations, 13 C.F.R. §107.630, TRINITY has a condition of Capital Impairment.

12. SBA afforded TRINITY an opportunity to cure its condition of Capital Impairment and TRINITY has failed to cure its condition of Capital Impairment beyond any applicable cure periods under the Regulations.

13. TRINITY's failure to cure its condition of Capital Impairment is a violation of the Regulations, 13 C.F.R. § 107.1830(b).

14. TRINITY's non-compliance with its terms of Leverage under 13 C.F.R. § 107.1830(b) is a violation of the Regulations, 13 C.F.R. § 107.507(a), for nonperformance of the terms of its Participating Securities.

15. Section 308(d) of the Act, 15 U.S.C. § 687(d), provides that upon determination and adjudication of noncompliance or violation of the Act or the

Regulations, all of the rights, privileges and franchises of a Licensee such as TRINITY may be forfeited and the company may be declared dissolved.

16. Section 311 of the Act, 15 U.S.C. § 687c, provides that upon a determination by SBA that a Licensee such as TRINITY, or any other person, has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or of any Rule or Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for an injunction, and such Court shall have jurisdiction of such action and grant a permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts or practices. The Court is authorized to appoint SBA to act as receiver for such Licensee.

COUNT ONE

Violation of SBA Regulations

13 C.F.R. §§ 107.1830(b) and 507(a)

17. Paragraphs 1 through 16 are adopted herein by reference.

18. TRINITY has an uncured condition of Capital Impairment as that term is defined under the Regulations.

19. SBA has determined that TRINITY is not in compliance with its terms of Leverage due to its uncured condition of Capital Impairment.

20. SBA has determined that TRINITY is in violation of the Regulations, 13

C.F.R. § 107.1830(b) and 507(a).

21. SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. § 687(d) and 687c, including the appointment of SBA as Receiver of TRINITY for the purposes of liquidating TRINITY and all of its assets.

WHEREFORE, Plaintiff prays as follows:

A. That injunctive relief, both preliminary and permanent in nature, be granted restraining TRINITY, its officers, directors, general partners, managers, agents, employees, and other persons acting in concert or participation therewith from: (1) making any disbursements of Defendant's funds; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any funds or assets of TRINITY, wherever located; and (3) violating the Act or the Regulations promulgated thereunder.

B. That this Court determine and adjudicate TRINITY's noncompliance with and violation of the Act and the Regulations promulgated thereunder.

C. That this Court, pursuant to 15 U.S.C. § 687c, take exclusive jurisdiction of TRINITY and all of its assets, wherever located, appoint SBA as receiver of TRINITY for the purpose of marshaling and liquidating the assets of TRINITY and satisfying the claims of creditors as determined by the Court, and such other relief as contained in the Proposed Order filed herewith.

D. That upon the liquidation of TRINITY and the completion of the receivership, TRINITY's SBIC license may be revoked.

E. That this Court grant such other relief as may be deemed just and equitable.

Respectfully submitted,

U.S. SMALL BUSINESS ADMINISTRATION

 Aug. 5, 2004

THOMAS W. RIGBY

VA. Bar No. 34663

D.C. Bar No. 463532

Chief Counsel for SBIC Liquidation

Office of General Counsel

U.S. Small Business Administration

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Washington, D.C. 20416

Telephone: 202.619.1610

Facsimile: 202.481.5866

Attorney for Plaintiff

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRINITY SBIC, L.P.

Defendant.

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Civil Case No.

Receivership Order

04 MBD **10233**

4-04CV-594-A

CONSENT ORDER OF RECEIVERSHIP

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Pursuant to the provisions 15 U.S.C. § 687c, this Court hereby takes exclusive jurisdiction of Trinity SBIC, L.P. ("TRINITY"), and all of its assets and property, of whatever kind and wherever located, and the United States Small Business Administration ("SBA") is hereby appointed Receiver of TRINITY ("Receiver") to serve without bond until further order of this Court. The Receiver is appointed for the purpose of marshaling and liquidating all of TRINITY's assets and satisfying the claims of creditors there from in the order of priority as determined by this Court.

2. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of TRINITY under applicable state and federal law, by the Amended and Restated Agreement of Limited Partnership, and By-Laws of said limited partnership, in addition

Receivership Order Page 1

to all powers and authority of a receiver at equity, and all powers and authority conferred upon the Receiver by the provisions of 15 U.S.C. § 687c and 28 U.S.C. § 754. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of TRINITY are hereby dismissed and the powers of any general partners are hereby suspended during the pendency of the receivership. Such persons and entities shall have no authority with respect to TRINITY's operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of TRINITY and shall pursue and preserve all of its claims.

3. The Receiver is entitled to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to TRINITY. The past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants, and employees of TRINITY, as well as all those acting in their place, are hereby ordered and directed to turn over to the Receiver forthwith all books, records, documents, accounts and all other instruments and papers of and relating to TRINITY and all of TRINITY's assets and all other assets and property of the limited partnership, whether real or personal. TRINITY's general partner, Trinity SBIC Genpar, L.L.C., and former Investment Advisor shall furnish a written statement within five (5) days after the entry of this Order, listing the identity, location and estimated value of all assets of TRINITY, a list of all employees (and job titles thereof), other personnel, attorneys, accountants and any other

agents or contractors of TRINITY, as well as the names, addresses and amounts of claims of all known creditors of TRINITY. Within thirty (30) days following the entry of this Order, TRINITY's general partner, Trinity SBIC Genpar, L.L.C., and former Investment Advisor shall also furnish a written report describing all assets. All persons and entities having control, custody or possession of any assets or property of TRINITY are hereby directed to turn such assets and property over to the Receiver.

4. The Receiver shall promptly give notice of its appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited partners of TRINITY, as the Receiver deems necessary or advisable to effectuate the operation of the receivership. All persons and entities owing any obligation, debt, or distribution with respect to a partnership interest to TRINITY shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if TRINITY had received such payments.

5. The Receiver is hereby authorized to open such Receiver's accounts at banking or other financial institutions to extend credit on behalf of TRINITY, to utilize SBA personnel, and to employ such other personnel as it may deem necessary to effectuate the operation of the receivership including, but not limited to, attorneys, accountants, consultants and appraisers, and is further authorized to expend receivership funds to compensate such personnel in such amounts and upon such terms as the Receiver shall deem reasonable in light of the usual fees and billing practices and

procedures of such personnel. The Receiver is not required to obtain Court approval prior to the disbursement of receivership funds for payments to personnel employed by the Receiver or for expenses that the Receiver deems advantageous to the orderly administration and operation of the receivership. In addition, the Receiver is authorized to reimburse the SBA for travel expenses incurred by SBA personnel in the establishment and administration of the receivership. The Receiver may, without further order of this Court, transfer, compromise, or otherwise dispose of any claim or asset in the ordinary course of business, other than real estate.

6. TRINITY's past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners of TRINITY, and other appropriate persons or entities (including without limitation, the defendant's portfolio of small business concerns and financial institutions doing business with defendant and/or defendant's portfolio of small business concerns) shall answer under oath to the Receiver all questions which the Receiver may put to them and produce any documents as required by the Receiver regarding the business of said limited partnership, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to TRINITY. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery request(s) in accordance with the Federal Rules of Civil Procedure.

7. The parties to any and all civil legal proceedings of any nature, including,

but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving TRINITY or any assets of TRINITY, including subsidiaries and partnerships, wherever located, and excluding the instant proceeding, involving TRINITY, the Receiver, or any of TRINITY's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise, are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding or any such asset. All civil legal proceedings of any nature, including but not limited to bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other action of any nature involving TRINITY or any assets of TRINITY, including subsidiaries and partnerships, wherever located, and excluding the instant proceeding, involving TRINITY, the Receiver, or any of TRINITY's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise, are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of TRINITY against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against

Complaint filed against TRINITY in the instant action, to obtain the relief so requested. After the foregoing activities are completed, the Receiver may submit a report to the Court recommending that TRINITY's SBIC license be revoked.

SIGNED

~~DATE~~ this 17 day of August, 2004.


U.S. District Court Judge

Presented by:


Thomas W. Rigby

Va. Bar No. 34663, D.C. Bar No. 463532

Chief Counsel for SBIC Liquidation

Office of General Counsel, U.S. Small Business Administration

409 Third Street, Seventh Floor

Washington, D.C. 20416

Telephone: 202.619.1610

Facsimile: 202.481.5866

Attorney for the Plaintiff

**THIS RECEIVERSHIP ORDER SEEN, STIPULATED AND AGREED BY
TRINITY SBIC, L.P., through its authorized representative**

By: 

Title:

VICE PRESIDENT

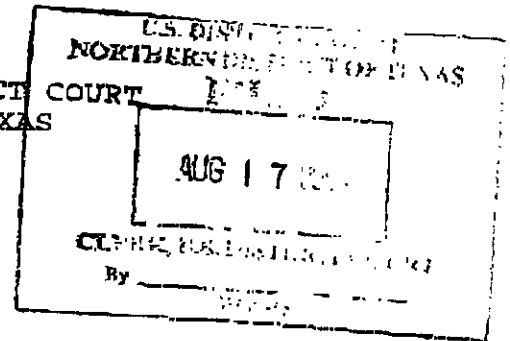
TRINITY SBIC Genpar, LLC

General Partner of TRINITY SBIC, L.P.

Date: 8-11-04

Receivership Order - Page 7

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

VS.

TRINITY SBIC, L.P.,

Defendant.

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NO. 4:04-CV-594-A

ORDER

The court has before it for consideration:

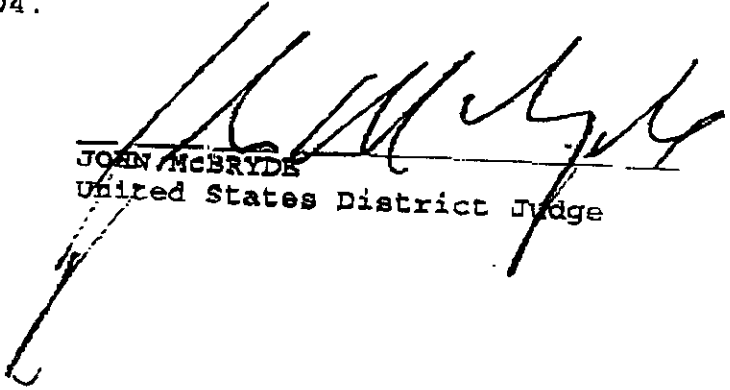
- (1) Agreed Motion Under 15 U.S.C. § 687c for Injunctive Relief and Appointment of the U.S. Small Business Administration as Permanent Receiver of Trinity SBIC, L.P.;
- (2) Memorandum of Points and Authorities in Support of Agreed Motion Under 15 U.S.C. § 687c for Injunctive Relief and Appointment of the U.S. Small Business Administration as Permanent Receiver of Trinity SBIC, L.P.; and
- (3) Proposed Consent Order of Receivership.

The proposed consent order contemplates that the court will make determinations and adjudications on subjects as to which the court has received no evidence. However, the court takes the stipulations and agreements of the parties to the proposed consent order to be, in effect, a stipulation and agreement to the existence of all facts that must exist for the court to make the determinations and adjudications contemplated by the proposed consent order. On that assumption, the court is signing the proposed consent order. Because the proposed consent order

appears to grant all the relief sought by plaintiff in its complaint, the court is rendering a final judgment.

THE COURT SO ORDERS.

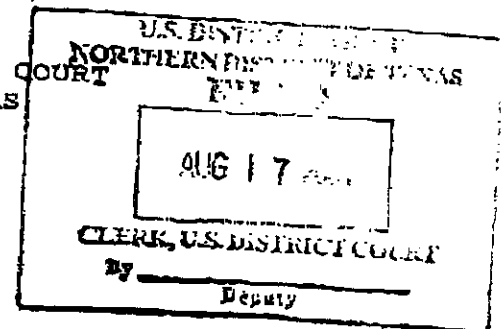
SIGNED August 17, 2004.



JOHN MCBRYDE
United States District Judge

COPY

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

VS.

TRINITY SBIC, L.P.,

Defendant.

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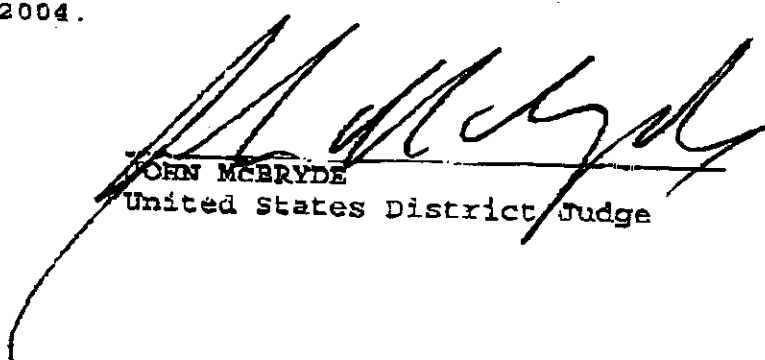
NO. 4:04-CV-594-A

FINAL JUDGMENT

Consistent with the Consent Order of Receivership signed in the above-captioned action on the date of the signing of this final judgment,

The court ORDERS, ADJUDGES, and DECREES that the adjudications made by the court in such Consent Order of Receivership constitute the final judgment of the court in this action.

SIGNED August 17, 2004.


JOHN MCERYDE
United States District Judge